

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STEEL WORKERS
LOCAL 12-369, STEPHANIE B.
GREEN, DAVID ROBERTS,

Plaintiff,

v.

UNITED STEEL WORKERS
INTERNATIONAL,

Defendant.

NO. CV-07-5053-RHW

**ORDER DENYING
PLAINTIFFS' SECOND MOTION
FOR PRELIMINARY
INJUNCTION; GRANTING
MOTION TO AMEND**

Before the Court are Plaintiffs' Motion for Leave to Amend Complaint (Ct. Rec. 36); Plaintiffs' Second Motion for Preliminary Injunction (Ct. Rec. 37); Plaintiffs' Motion for Contempt (Ct. Rec. 44); and Defendant's Motion to Strike, or in the Alternative, Motion for Leave to File Surreply (Ct. Rec. 78).

A telephonic hearing was held on the motions on January 10, 2008. Plaintiffs were represented by Janet Taylor. Defendant was represented by Jay Smith and Steven Crumb.

FACTS

Plaintiffs Stephanie Green¹ and David Roberts² are elected officers in the

¹Plaintiff is the elected President of the United Steelworkers Local 12-369.

²Plaintiff David Roberts is the duly elected Financial Secretary of United Steelworkers Local 12-369.

1 United Steel Workers Local 12-239.³ Defendant is the United Steel Workers
2 International.⁴ On August 20, 2007, letters dated August 13, 2007, were delivered
3 to the Local officers, notifying them that the International Union was installing an
4 Administratorship over Local 12-369 and appointing Jim Woodward as
5 Administrator. Defendant then took control over all of the Local union documents
6 and records, excluded Plaintiff Green and Roberts from the Union offices, and took
7 control over the Local's bank accounts by removing the existing officers' signature
8 authority and obtaining new signature cards. On August 23, 2007, Defendant
9 changed the locks on the local Union offices.

10 Plaintiffs filed a complaint on August 28, 2007, and at the same time, filed a
11 motion for temporary restraining order and motion for preliminary injunction. In
12 their complaint, Plaintiffs ask that the Administratorship be declared invalid; that
13 Defendant be enjoined from proceeding with the unlawful Administratorship; and
14 be ordered to return control of all Local property and affairs to the duly elected
15 officers. Plaintiff sought damages and costs and attorneys' fees.

16 A telephonic hearing was held on September 4, 2007. At the hearing, the
17 Court orally ruled that Defendant failed to provide Plaintiffs with the requisite
18 notice to install an administratorship, and that no emergency existed. In the
19 written Order, the Court found that Defendant failed to follow their constitutional
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21 ³United Steelworkers Local 12-369 is a subordinate body of the Defendant
22 with its principal offices located in Richland, Benton County, Washington. Local
23 12-369 represents members in several cities in Washington State, and also had
24 members and bargaining units in Oregon and Hawaii.

25 ⁴Defendant indicates that United Steel Workers International is the incorrect
26 name, rather the proper name of Defendant is United Steel, Paper and Forestry,
27 Rubber, Manufacturing, Energy, Allied Industrial and Service Workers
28 International Union.

1 provision in establishing the administratorship and granted Plaintiffs' Motion for
2 Preliminary Injunction (Ct. Rec. 27).

3 Specifically, the Court ordered Defendant to abolish the Administratorship;
4 restore the elected officers to their positions; refrain from suspending the officers;
5 restore all Local property to the control of the elected officers; return signature
6 authority over the Local's bank accounts and funds to the duly elected officers; and
7 refrain from taking control of Local property.

8 On October 19, 2007, Terry Bonds, District 12 Director for International
9 filed charges against Plaintiffs Green and Roberts, in which the International
10 President was asked to institute Article IX Administratorship proceedings against
11 Local 12-369. Present Gerard appointed a Commission on October 22, 2007. The
12 Commission commenced hearings on November 5, 6, and 27, 2007. The
13 Executive Board of the International Union have not yet issued its findings with
14 regard to the hearings.

15 Plaintiffs filed their Second Motion for Preliminary Injunction on November
16 20, 2007, prior to the completion of the Administratorship proceedings and filed a
17 motion to shorten time. On November 27, 2007, the Court denied Plaintiff's
18 Second Motion for an Order Shortening Time (Ct. Rec. 47).

19 DISCUSSION

20 1. Plaintiffs' Motion for Contempt

21 Plaintiffs' basis for their motion for contempt is that Defendants have
22 engaged in conduct that prevented the officers from being restored to their
23 positions. In their briefing, Plaintiffs cite three instances where Defendant has
24 acted in contempt of the Court's order: (1) the International Union has attempted to
25 influence the affairs of the Local and impede the officers from performing their
26 duties; (2) International has given direction to a Local employee; and (3) the
27 International suspended the actions of Local President Stephanie Green in that the
28 International suspended the appointments of two trainers.

**ORDER DENYING PLAINTIFFS' SECOND MOTION FOR
PRELIMINARY INJUNCTION; GRANTING MOTION TO AMEND ~ 3**

1 “A district court has the power to adjudge in civil contempt any person who
2 willfully disobeys a specific and definite order of the court.” *Gifford v. Heckler*,
3 741 F.2d 263, 266 (9th Cir. 1984). A district court has wide latitude in determining
4 whether there has been contemptuous defiance of its order. *Id.* “In a civil
5 contempt proceeding, the contempt must be proved by clear and convincing
6 evidence.” *Vertex Distrib., Inc. v. Falcon Foam Plastics, Inc.*, 689 F.2d 885, 889
7 (9th Cir. 1982). “[I]f a defendant's action ‘appears to be based on a good faith and
8 reasonable interpretation of [the court's order],’ he should not be held in contempt.”
9 *Id.* If an injunction does not clearly describe prohibited or required conduct, it is
10 not enforceable by contempt. *Gates v. Shinn*, 98 F.3d 463, 468 (9th Cir. 1996).

11 According to Defendants, they complied with the Court’s order and
12 promptly dissolved the Administratorship. The International President sent a letter
13 to Mr. Woodward, revoking his appointment as Administrator and directing him to
14 comply with the Court’s order restoring the property and signature authority of the
15 officers. Mr. Woodward was instructed to notify the Hanford Atomic Metal
16 Trades Council (“HAMTC”)⁵ that the Administratorship had been abolished.

17 Plaintiffs have failed to establish that Defendants violated any specific and
18 direct order from the Court. The Court does not read its Order as prohibiting the
19 three proffered instances of contempt. Indeed, the intent of the Court order was to
20 do nothing more than to dissolve the administratorship after the Court determined
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22 ⁵HAMTC is an organization comprised of many local unions affiliated with
23 a variety of national and international unions that represent employees who are
24 employed by a variety of employers at the Hanford nuclear facility. HAMTC is
25 recognized as the exclusive bargaining representative under Section 9 of the
26 National Labor Relations Act. HAMTC negotiates contracts and authorizes
27 grievance processing on behalf of fifteen unions that represent workers in the
28 atomic metal trades.

1 that it was not implemented in accordance with International's constitution and by-
2 laws. The Order does not, nor did the Court intend to, alter the ordinary
3 relationship between International and its local unions.

4 Accordingly, Plaintiffs' Motion for Contempt is denied.

5 **2. Plaintiffs' Second Motion for Preliminary Injunction**

6 Plaintiffs' Second Motion for Preliminary Injunction involves the second
7 commission hearing that occurred in November 2007, in response to the complaint
8 filed by Terry Bonds. Specifically, Plaintiffs are asking the Court to abolish the
9 October 22, 2007, Commission appointed by President Gerard; enjoin the
10 International from having its agents and employees communicating ex parte with
11 HAMTC; enjoin the International from processing charges against Green and
12 Roberts without judicial approval; and enjoin the International from instituting
13 Administratorship proceedings against the Local without judicial approval.

14 To obtain a preliminary injunction in federal court, Plaintiff is required to
15 demonstrate: "(1) a strong likelihood of success on the merits, (2) the possibility of
16 irreparable injury to plaintiff[s] if preliminary relief is not granted, (3) a balance of
17 hardships favoring the plaintiff[s], and (4) advancement of the public interest (in
18 certain cases)." *Johnson v. Cal. State Bd. of Accountancy*, 72 F.3d 1427, 1430 (9th
19 Cir. 1995) (citation and internal quotation marks omitted). These factors have been
20 incorporated into two inquiries under which the moving party may meet its burden
21 by demonstrating either (1) a combination of probable success on the merits and
22 the possibility of irreparable injury, or (2) that serious questions are raised and the
23 balance of hardships tip sharply in its favor, and at least a fair chance of success on
24 the merits. *Owner Operator Indep. Drivers Ass'n, Inc. v. Swift Transp. Co.*, 367
25 F.3d 1108, 1111 (9th Cir. 2004). "These two formulations represent two points on
26 a sliding scale in which the required degree of irreparable harm increases as the
27 probability of success decreases." *Id.* Or put another way, "the greater the
28 hardship to the party seeking the preliminary injunction, the less probability of

1 success must be established by the party.” *Harris v. Board of Supervisors*, 366
2 F.3d 754, 759 (9th Cir. 2004).

3 Plaintiffs argue that the November 2007 hearings were not
4 Administratorship hearings, but rather were disciplinary hearings, and as such,
5 were not conducted in a manner set forth in Article XIII of Defendant’s
6 constitution.

7 The Court finds that, based on the record before the Court, the November
8 2007 hearings were not disciplinary hearings. Moreover, the International Union is
9 authorized under Article IX of its constitution to conduct hearings to determine
10 whether it should suspend or revoke the charter of a Local Union, or any other
11 action as may be necessary to secure compliance with the constitution. Article IX
12 provides that the Local Union shall be afforded a full and fair hearing.

13 Plaintiffs’ position is that a full and fair hearing under Article XIII was not
14 provided. However, this does not help the Court in determining whether a full and
15 fair hearing was held under Article IX. For instance, Plaintiffs take issue with the
16 fact that International employees conducted the hearing. Article IX provides that
17 the hearing be conducted by any member or members of the International
18 Executive Board or representative or representatives designated by the
19 International President. Here, the hearing officers were designated by the
20 International President in accordance with the constitution.

21 Moreover, to the extent Plaintiffs are asking this Court to enjoin the
22 International Union from conducting a hearing that, in the absence of an
23 emergency, is required by its constitution before it may impose a trusteeship, the
24 Court does not have authority to do so under the Labor-Management Reporting
25 and Disclosure Act of 1959 (“LMRDA”). *See Laborers’ Intern’l Union of North*
26 *Am. v. Nat’l Post Officer Mail Handlers*, 880 F.2d 1388 , 1394 (D.C. Cir. 1989)
27 (“In the absence of exceptional circumstances, Title III contemplates judicial
28 review of the trusteeship order itself, rather than review of the decision to hold a

1 hearing.”). Plaintiffs have not demonstrated that exceptional circumstances exist in
2 this case. Because Plaintiffs cannot succeed in their request for the Court to
3 enjoin the proceedings to establish an Administratorship, Plaintiffs’ Motion for
4 Preliminary Injunction must fail.

5 Accordingly, **IT IS HEREBY ORDERED:**

6 1. Plaintiffs’ unopposed Motion for Leave to Amend Complaint (Ct. Rec.
7 36) is **GRANTED**.

8 2. Plaintiffs’ Second Motion for Preliminary Injunction (Ct. Rec. 37) is
9 **DENIED**.

10 3. Plaintiffs’ Motion for Contempt (Ct. Rec. 44) is **DENIED**.

11 4. Defendant’s Motion to Strike or, in the Alternative, Motion for Leave to
12 File Surreply (Ct. Rec. 78) is **DENIED**, as moot.

13 5. Defendant’s Motion to Expedite (Ct. Rec. 80) is **DENIED**, as moot.

14 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
15 Order and forward copies to counsel.

16 **DATED** this 28th day of January, 2008.

17
18 s/Robert H. Whaley
19 ROBERT H. WHALEY
20 Chief United States District Judge

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